SUPREME COURT OF INDIA

Keshar Bai

Vs.

Chhunulal

C.A.No.106 of 2014

(Ranjana Prakash Desai and J. Chelameswar JJ.)

07.01.2014

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. This appeal, by grant of special leave, is directed against the judgment and order dated 03/08/2010 passed by the High Court of Madhya Pradesh, Bench at Indore allowing Second Appeal No. 756 of 2004 filed by the respondent.

3. Briefly put, the facts are that the appellant-landlady purchased House No. 1/2, Street No. 6, Parsi Mohallah, Indore ('the said building') from M/s. Pyare Mohan Khar, Hari Mohan Khar, Shayam Sunder Khar and Anil Khar predecessors-in-title of the appellant by a registered sale deed dated 26/9/1991 for a consideration of Rs. 1,70,000/-. At the time of purchase of the said building, the respondent-tenant was occupying one room ('suit premises') situated on the rear side of the said building as tenant. The respondent was informed by the predecessors-in-title of the appellant that the appellant is the new landlady of the said building and he should pay the rent to her. The respondent agreed to pay the rent but failed to pay it. Failure of the respondent to pay the rent resulted in a notice being sent by the appellant to him on 23/11/2002, but despite the notice the respondent did not pay the rent.

4. On 06/1/2003, the appellant filed a suit for eviction of the respondent under the M.P. Accommodation Control Act, 1961 ('the M.P. Act') on grounds of non-

payment of rent, denial of the appellant's title by the respondent, bona fide need for residential purpose and reconstruction of the said building as it had become unsafe for human habitation. It was specifically averred in the plaint that the appellant had purchased the said building vide a registered document on 26/9/1991.

5. The respondent contested the said suit and filed a written statement denying the title of the appellant as well as the grounds on which his eviction from the suit premises was sought. The respondent denied that there was any attornement between the parties and that there was a landlord- tenant relationship between him and the appellant. He claimed to be tenant of the earlier landlord Shri Khar. He contended that he had never paid any rent to the appellant. He denied the genuineness of the registered sale deed dated 26/9/1991.

6. The trial court decreed the suit under Section 12(1)(c) of the M.P. Act. The suit was dismissed so far as the other grounds are concerned. The trial court's judgment was confirmed by the first appellate court. The High Court by the impugned order set aside the eviction decree passed by the courts below holding that in the facts of the case no decree under Section 12 (1) (c) of the M.P. Act could be passed. The controversy, therefore, revolves around Section 12(1)(c) of the M.P. Act in the context of the facts of this case.

7. Shri Ardhendumauli Kumar Prasad, learned counsel for the appellant, submitted that both the courts having concurrently found that the landlord was entitled to a decree of eviction under Section 12(1)(c) of the M.P. Act and since there was no perversity attached to the said finding, the High Court ought not to have interfered with it while dealing with a second appeal, particularly, when there was no substantial question of law involved in the matter. In this connection, he relied on Deep Chandra Juneja v. Lajwanti Kathuria (dead) through LRs.[1], Yash Pal v. Ram Lal & Ors.[2] and Firojuddin & Anr. v. Babu Singh[3]. Mr. Prasad submitted that it is clearly established from the evidence on record that the respondent had denied the title of the appellant and, therefore, the case clearly falls within the ambit of Section 12(1)(c) of the M.P. Act. The eviction decree was, therefore, correctly passed by the trial court and confirmed by the first appellate court. In this connection he relied on Devasahyam v. P. Savithramma[4], State of Andgra Pradesh & Ors. v. D. Raghukul Pershad(dead) by LRs.& Ors.[5] and Bhogadi Kannababu & Ors. v. Vuggina Pydamma & Ors.[6]. Counsel submitted that in the circumstances the impugned order be set aside.

8. Shri Amit Pawan, learned counsel for the respondent, on the other hand submitted that attornment of tenancy to the appellant is not proved. Counsel submitted that the respondent had no knowledge about the sale transaction that allegedly took place between the appellant and Shri Khar, under which the appellant is said to have purchased the suit premises. This is a case of derivative title which the tenant can deny if he had no knowledge of the sale transaction. Counsel submitted that the trial court and lower appellate court ignored this vital legal position and, therefore, the High Court rightly set aside the eviction decree. Counsel relied on Mohd. Nooman & Ors. v. Mohd. Jabed Alam & Ors.[7] in support of his submission that the issue regarding title can be decided in an eviction suit and, therefore, it was correctly raised by the respondent.

9. It is well settled by a long line of judgments of this Court that the High Court should not interfere with a concurrent finding of fact unless it is perverse. (See: Deep Chandra Juneja, Yash Pal & Firojuddin). In this case, for the reasons which we shall soon record, we are unable to find any such perversity in the concurrent finding of fact returned by the courts below warranting the High Court's interference.

10. The trial court passed the decree under Section 12 (1)(c) of the M.P. Act on the ground that the respondent-tenant denied the title of the appellant-landlady. It was confirmed by the first appellate court. It is, therefore, necessary to reproduce Section 12(1) (c) of the M.P. Act. It reads as under:

> "12. Restriction on eviction of tenants.—(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely—
>
> (a) xxx
>
> (b) xxx
>
> (c) that the tenant or any person residing with him has created nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the interest of the landlord therein:

Provided that the use by a tenant of a portion of the accommodation as his office shall not be deemed to be an act inconsistent with the purpose for which he was admitted to the tenancy;"

11. The first question that arises is how denial of title falls within the ambit of Section 12(1)(c) of the M.P. Act. Under Section 111(g) of the Transfer of Property Act, 1882, the lease is determined by forfeiture, if the lessee denies the lessor's title. While dealing with eviction suit, arising out of the M.P. Act, in Devasahayam, this Court has held that so just is the above rule that in various rent control legislations such a ground is recognized and incorporated as a ground for eviction of a tenant either expressly or impliedly within the net of an act injurious to the interest of the landlord. It is further held that denial of landlord's title or disclaimer of tenancy by tenant is an act which is likely to affect adversely and substantially the interest of the landlord. It is, therefore, covered by Section 12(1)(c) of the M.P. Act. The following observations of this Court in Devasahayam are relevant:

"27. In Sheela v. Prahlad Rai Prem Prakash[8] whereupon Mr. Nageswara Rao placed strong reliance, Lahoti, J., as the learned Chief Justice then was, while construing the provisions of clause (c) of sub-section (1) of Section 12 of the M.P. Accommodation Control Act, 1961 observed:

13. The law as to tenancy being determined by forfeiture by denial of the lessor's title or disclaimer of the tenancy has been adopted in India from the law of England where it originated as a principle in consonance with justice, equity and good conscience. On enactment of the Transfer of Property Act, 1882, the same was incorporated into clause (g) of Section 111. So just is the rule that it has been held applicable even in the areas where the Transfer of Property Act does not apply. (See:Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur[9].) The principle of determination of tenancy by forfeiture consequent upon denial of the lessor's title may not be applicable where rent control legislation intervenes and such legislation while extending protection to tenants from eviction does not recognise such denial or disclaimer as a ground for termination of tenancy and eviction of tenant. However, in various rent control legislations such a ground is recognised and incorporated as a ground for eviction of tenant either expressly or impliedly by bringing it within the net of an act injurious to the interest of the landlord on account of its mischievous content to prejudice adversely and substantially the interest of the landlord.

… … … …

… … … …

17. In our opinion, denial of landlord's title or disclaimer of tenancy by tenant is an act which is likely to affect adversely and substantially the interest of the landlord and hence is a ground for eviction of tenant within the meaning of clause (c) of sub-section (1) of Section 12 of the M.P. Accommodation Control Act, 1961. To amount to such denial or disclaimer, as would entail forfeiture of tenancy rights and incur the liability to be evicted, the tenant should have renounced his character as tenant and in clear and unequivocal terms set up title of the landlord in himself or in a third party. A tenant bona fide calling upon the landlord to prove his ownership or putting the landlord to proof of his title so as to protect himself (i.e. the tenant) or to earn a protection made available to him by the rent control law but without disowning his character of possession over the tenancy premises as tenant cannot be said to have denied the title of landlord or disclaimed the tenancy. Such an act of the tenant does not attract applicability of Section 12(1)(c) abovesaid. It is the intention of the tenant, as culled out from the nature of the plea raised by him, which is determinative of its vulnerability."

12. Having ascertained the legal position we will now state why we feel that the High Court is not right in disturbing the concurrent finding of fact that the respondent-tenant denied the title of the appellant-landlady.

13. There is a specific reference to the registered document under which the appellant purchased the suit building from the earlier landlord in the plaint. Yet, in the written statement the respondent denied the title of the appellant. We notice that there are several documents on record relating to the ownership of the appellant, apart from the registered sale deed, such as municipal tax receipts, ration card etc. Yet, the respondent refused to acknowledge the appellant's title. He denied it in his evidence. This is not a simple case of denial of derivative title by a person who did not know about the purchase of the building by the landlord. Even after going through the relevant documents relating to the appellant's title the respondent feigned ignorance about it. The High Court has accepted that in his cross-examination the respondent has stated that he was not accepting the appellant as his landlady. The High Court has, however, gone on to say that by this piece of evidence no decree of eviction can be passed against the respondent under Section

12(1)(c) of the M.P. Act because the respondent will have no occasion to establish in what circumstances he denied the title of the appellant. The High Court has further held that the respondent was within permissible limit in asking the appellant to produce documentary evidence about his title as a landlord. The High Court, in our opinion, fell into a grave error in drawing such a conclusion. Even denial of a landlord's title in the written statement can provide a ground for eviction of a tenant. It is also settled position in law that it is not necessary that the denial of title by the landlord should be anterior to the institution of eviction proceedings. This is so stated by this Court in Majati Subbarao v. P.V.K. Krishnarao(deceased) by LRs.[10].

14. The High Court has expressed that the respondent was justified in asking the appellant to produce the documents. Implicit in this observation is the High Court's view that the respondent could have in an eviction suit got the title of the appellant finally adjudicated upon. There is a fallacy in this reasoning. In eviction proceedings the question of title to the properties in question may be incidentally gone into, but cannot be decided finally. Similar question fell for consideration of this Court in Bhagadi Kannabalu. In that case it was argued that the landlady was not entitled to inherit the properties in question and hence could not maintain the application for eviction on the ground of default and sub- letting under the A.P. Tenancy Act. This Court referred to its decision in Tej Bhan Madan v. II Additional District Judge and Ors.[11] in which it was held that a tenant was precluded from denying the title of the landlady on the general principle of estoppel between landlord and tenant and that this principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. Section 116 of the Evidence Act is clearly applicable to such a situation. This Court held that even if the landlady was not entitled to inherit the properties in question, she could still maintain the application for eviction and the finding of fact recorded by the courts below in favour of the landlady was not liable to be disturbed. The position on law was stated by this Court as under:

> "In this connection, we may also point out that in an eviction petition filed on the ground of sub-letting and default, the court needs to decide whether relationship of landlord and tenant exists and not the question of title to the properties in question, which may be incidentally gone into, but cannot be decided finally in the eviction proceeding."

15. Reliance placed by learned counsel for the respondent on Mohd. Nooman is misplaced. In that case, the landlord had filed an eviction suit described as Title Suit No.36 of 1973 to evict the tenant. The trial court held that the relationship of landlord and tenant had not been proved and since the tenant had raised the question of title the proper course would be to dismiss the suit and not to convert it into a declaratory suit because the suit was neither for declaration of title nor had the plaintiff paid ad valorem court fee. The trial court dismissed the suit as there was no landlord and tenant relationship, but, upheld the plaintiff's claim of title. In the appeal, the first appellate court observed that by filing a suit for eviction and paying court fee on twelve months alleged rent, the plaintiff had adopted a tricky way of getting the title decided. The plaintiff, then, filed a suit on title. The trial court decreed the suit. The first appellate court allowed the appeal and dismissed the suit. In the second appeal before the High Court the question was whether the judgment and decree regarding title passed in the earlier suit shall operate as res judicata between the parties on the question of title. The High Court observed that pleas taken by both parties regarding title in both the title suits are the same and answered the question in affirmative. This Court endorsed the High Court's view and held that the issue of title was directly and substantially an issue between the parties in the earlier eviction suit, hence, the High Court was right in holding that the finding of title recorded in the earlier suit would operate as res judicata in the subsequent suit. This view was expressly restricted by this Court to the facts before it. This Court clarified that ordinarily it is true that in a suit for eviction even if the court goes into the question of title it examines the issue in an ancillary manner and in such cases (which constitute a very large majority) any observation or finding on the question of title would certainly not be binding in any subsequent suit on the dispute of title. This Court further clarified that the case with which it was dealing fell in an exceptional category of very limited number of cases. Thus, in our opinion, no parallel can be drawn from Mohd. Nooman. In that case issue of title was framed. In the instant case issue of title was not even framed. Mohd. Nooman arose out of exceptional facts and must be restricted to those facts.

16. In view of the above, we are of the opinion that the High Court was wrong in setting aside the concurrent finding of fact recorded by the courts below that the respondent had denied the title of the appellant. We are of the view that the present case is covered by Section 12(1)(c) of the M.P. Act. It is, therefore, necessary to restore the decree of eviction. In the circumstances, we allow the appeal. The impugned judgment of the High Court is set aside and eviction decree passed by the trial court and confirmed by the first appellate court under Section 12(1)(c) of the M.P. Act is restored.

17. The appeal is disposed of in the afore-stated terms.

[1] (2008) 8 SCC 497
[2] (2005) 12 SCC 239
[3] (2012) 3 SCC 319
[4] (2005) 7 SCC 653
[5] (2012) 8 SCC 584
[6] (2006) 5 SCC 532
[7] (2010) 9 SCC 560
[8] (2002) 3 SCC 375
[9] AIR 1965 SC 1923
[10] (1989) 4 SCC 732
[11] (1988) 3 SCC 137